

§ 123.300

8 percent per annum. If you do not have credit elsewhere, your interest rate will not exceed 4 percent per annum. The maturity of your loan depends upon your repayment ability, but cannot exceed 3 years if you have credit elsewhere. Otherwise, the maximum maturity is 30 years.

(b) Generally, you must pay equal monthly installments, of principal and interest, beginning five months from the date of the loan as shown on the Note. SBA will consider other payment terms if you have seasonal or fluctuating income, and SBA may allow installment payments of varying amounts over the first two years of the loan. There is no penalty for prepayment for disaster loans.

ECONOMIC INJURY DISASTER LOANS

§ 123.300 Is my business eligible to apply for an economic injury disaster loan?

(a) If your business is located in a declared disaster area, and suffered substantial economic injury as a direct result of a declared disaster, you are eligible to apply for an economic injury disaster loan.

(1) Substantial economic injury is such that a business concern is unable to meet its obligations as they mature or to pay its ordinary and necessary operating expenses.

(2) Loss of anticipated profits or a drop in sales is not considered substantial economic injury for this purpose.

(b) Economic injury disaster loans are available only if you were a small business (as defined in part 121 of this chapter) when the declared disaster commenced, you and your affiliates and principal owners (20% or more ownership interest) have used all reasonably available funds, and you are unable to obtain credit elsewhere (see § 123.104).

(c) Eligible businesses do not include agricultural enterprises, but do include—

(1) Small nurseries affected by a drought disaster designated by the Secretary of Agriculture (nurseries are commercial establishments deriving 50 percent or more of their annual receipts from the production and sale of

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ornamental plants and other nursery products, including, but not limited to, bulbs, florist greens, foliage, flowers, flower and vegetable seeds, shrubbery, and sod);

(2) Small agricultural cooperatives; and

(3) Producer cooperatives.

§ 123.301 When would my business not be eligible to apply for an economic injury disaster loan?

Your business is not eligible for an economic disaster loan if you (or any principal of the business) fit into any of the categories in §§ 123.101 and 123.201, or if your business is:

(a) Engaged in lending, multi-level sales distribution, speculation, or investment (except for real estate investment with property held for rental when the disaster occurred);

(b) A non-profit or charitable concern;

(c) A consumer or marketing cooperative;

(d) Not a small business concern; or

(e) Deriving more than one-third of gross annual revenue from legal gambling activities;

(f) A loan packager which earns more than one-third of its gross annual revenue from packaging SBA loans;

(g) Principally engaged in teaching, instructing, counseling, or indoctrinating religion or religious beliefs, whether in a religious or secular setting; or

(h) Primarily engaged in political or lobbying activities.

[61 FR 3304, Jan. 31, 1996, as amended at 63 FR 46644, Sept. 2, 1998]

§ 123.302 What is the interest rate on an economic injury disaster loan?

Your economic injury loan will have an interest rate of 4 percent per annum or less.

§ 123.303 How can my business spend my economic injury disaster loan?

(a) You can only use the loan proceeds for working capital necessary to carry your concern until resumption of normal operations and for expenditures necessary to alleviate the specific economic injury, but not to exceed that which the business could have provided had the injury not occurred.

Small Business Administration

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- (b) Loan proceeds may not be used to:
 - (1) Refinance indebtedness which you incurred prior to the disaster event;
 - (2) Make payments on loans owned by another federal agency (including SBA) or a Small Business Investment Company licensed under the Small Business Investment Act;
 - (3) Pay, directly or indirectly, any obligations resulting from a federal, state or local tax penalty as a result of negligence or fraud, or any non-tax criminal fine, civil fine, or penalty for non-compliance with a law, regulation, or order of a federal, state, regional, or local agency or similar matter;
 - (4) Repair physical damage; or
 - (5) Pay dividends or other disbursements to owners, partners, officers or stockholders, except for reasonable remuneration directly related to their performance of services for the business.

PRE-DISASTER MITIGATION LOANS

SOURCE: Sections 123.400 through 123.407 appear at 64 FR 48276, Sept. 3, 1999, unless otherwise noted.

§ 123.400 What is a pre-disaster mitigation loan?

Congress has authorized a pilot program for 5 fiscal years from 2000 through 2004 for SBA to make low interest, fixed rate loans to small businesses to use mitigation measures in support of Project Impact, a formal mitigation program established by the Federal Emergency Management Agency (FEMA).

§ 123.401 What types of mitigating measures are eligible for a pre-disaster mitigation loan?

Mitigation means specific measures taken by you to protect your real property or leasehold improvements from future disasters in Project Impact communities. If you are a landlord, the measures must be for protection of property leased primarily for commercial rather than residential purposes, to be determined on a comparative square footage basis. Additionally, SBA will consider providing a pre-disaster mitigation loan for relocation if your commercial real property is lo-

cated in a SFHA (Special Flood Hazard Area) and you relocate outside the SFHA but remain in the same Project Impact community. If the mitigation measures protect against a flood hazard, the applicant small business must be located in an existing structure in a SFHA. The local Project Impact coordinator will confirm that your proposed project is in accordance with specific Project Impact priorities and goals of that community. SBA will verify that the cost estimate is reasonable to accomplish each project to determine if the project is likely to accomplish the stated desired mitigation results. SBA verification and subsequent loan approval are not a guarantee that the project will prevent damages in future disasters.

§ 123.402 What businesses are eligible to apply for pre-disaster mitigation loans?

Each State, the District of Columbia, Puerto Rico, and the Virgin Islands have at least one FEMA Project Impact community. Only those small businesses located in Project Impact communities are eligible to apply for a pre-disaster mitigation loan. Your small business may be a sole proprietorship, partnership, corporation, limited liability company, or other legal entity recognized under State law. Your small business must have been in existence for at least one year prior to submitting an application for this loan. Your business (together with its affiliates) must be small (as defined in part 121 of this chapter) as of the date SBA accepts the application for processing, and SBA must also determine that the business, its affiliates and its owners do not have the financial resources to fund the mitigation measures without undue hardship.

§ 123.403 When would my business not be eligible to apply for a pre-disaster mitigation loan?

Your business is not eligible for a pre-disaster mitigation loan if it, together with its affiliates, fits into any of the categories in §§ 123.101, 123.201, and 123.301.